IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

CWP No. 835 of 2006.

Date of Decision: 13.6.2007

Sumit Dhiman ..Petitioner.

Versus.

The H.P. University ..Respondent.

Coram:
The Hon'ble Mr. Justice Deepak Gupta, Judge.
The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?

For the Petitioner(s): Mr. K.S.Patyal, Sr.Advocate with Mr. Vikrant Sankhayan, Advocate.

For the Respondent(s): Mr. V.D.Khidta, Advocate.

Deepak Gupta, J (Oral)

By means of this writ petition, the petitioner has prayed that the respondent- University be directed to grant him admission in the B.Ed Course in the University for which the minimum educational qualification is graduation with 45% marks.

The brief facts of the case are that the petitioner had appeared in the BA final examination conducted by the University in April, 2003, the result whereof was declared in June, 2003. The petitioner obtained 37 marks in English, 50 marks in History and 38 marks in Political Science. His total marks were 125 out of 300. He had obtained 301 marks out of 700 in BA Part I and II examinations and as such his grand total for the graduation course was 426 marks out of 1000.

It appears that the petitioner had applied for permission to improve his marks in English. Though we had passed orders on 24.5.2007 directing the

respondent- University to produce the application filed by the petitioner in this Court, the same has not been produced. However, it is apparent from the marks sheet Annexure P2 that after improvement, the petitioner was awarded 53 marks in English as against 37 marks originally awarded to him. The petitioner thereafter again applied for improvement of marks in Political Science. This application was filed by him after 9.12.2004. The respondent permitted the petitioner to appear in the examination to improve his marks in Political Science. He obtained 55 marks in Political Science after improvement. As a consequence of the improvement, the petitioner obtained 16 marks more in English and 17 marks more in Political Science, meaning thereby that he has improved his total score by 33 marks. Therefore, he has now obtained 158 marks in the final year and his grand total had come to 459 out of 1000 marks i.e. 45.9%.

The stand of the respondent is that under Ordinance 6.23(c), a candidate is only allowed to avail only one chance for improvement if he is to take benefit of the improvement for admission to a course for which graduation is the minimum educational qualification. It is also contended that as per Ordinance 6.23, the result of a candidate shall only be declared if he is able to improve his division or get at least 55 percent marks in the aggregate of the result desired to be improved. The relevant portion of the Ordinance 6.23 reads as follows:-

> 6.23 (a) No one, who has already passed an examination of the University or any other University, established by law in India, shall be permitted to re-appear in that examination.
>
> (b) Provided that before a candidate become eligible for the degree of M.A., M.Sc., M.B.A., M.T.A., M.C.A., B.Ed., M.Ed., LL.B., LL.M., Acharya in Sanskrit language and literature and Bachelor of Journalism and Mass Communication as the case may be, he may apply for the cancellation of the result of any course or courses in which he may have passed in any semester examination(s) and may re- appear in the corresponding semester examination(s) to improve his score in the particular course or courses.

Provided further that a person belonging to any of the following categories, who has already obtained or has become eligible for the award of the degree of M.A., M.Sc., M.B.A., M.T.A., M.C.A., B.Ed., LL.B., LL.M, Acharya in Sanskrit language and Literature and Bachelor in Journalism and Mass Communication, may be allowed to re-appear in the same examination to improve division, namely:

(i) a person, who has obtained or has become eligible for the award of the degree from the University:

(ii) xxxx xxxxx xxxxx xxxxx xxxxx

(iii) xxx xxxx xxx xxxx xxx xx

A candidate belonging to category (i) above may be allowed to appear in any course(s) which may be either entirely new or in which he may wish to appear again to improve score, if he has already obtained the degree, or may have the option after the declaration of final result, whether he wants to take the degree or get one or more courses of the final semester cancelled to improve his score in the course/courses, if he has become eligible for the award of the degree, but the option, if any must be exercised by the candidate within one month of the date of declaration of the result of the fourth semester. The aggregate of he marks obtained by him in the earlier examination in the course in which he does not appear shall determine his new division. <u>The result of a candidate shall only be declared if he is able to improve his division or get at least 55 percent marks in the aggregate of the result desired to be improved.</u> (Emphasis supplied).

xxx xxxx xxx xxxx xxxx

(b) xx xxx xxx xxx xxx

xxx xxxx xxx xxx xxx xxx xxx xxx

xxxx xxx xxx xxx xxx xxx xxx xx xxx

(c) A candidate who does not fulfill the percentage required for admission to Master's decree course may be allowed to improve his score in only one subject/additional subject of his choice only once within two years from the passing of the respective examination:

Provided that this concession shall be for the purpose of eligibility for admission to a course for which graduation is the minimum qualifications for admission."

Clause (c) of Ordinance 6.23 clearly lays down that a candidate can avail only one chance of improvement while seeking admission to a course for

which graduation is the minimum qualification for admission. The benefit of two improvements cannot be given to the petitioner. Further as per Ordinance 6.23(b) it is clear that the result of the candidate who has sought improvement of the marks will only be declared if the candidate improves his division or gets at least 55% marks in the aggregate of the result desired to be improved. The petitioner, however, does not fulfill any of these conditions. He has neither improved his division nor his total aggregate has improved to 55% or above. Therefore, he cannot derive benefit of the improvement.

Keeping in view the aforesaid facts, we find no merit in this writ petition which is accordingly dismissed.

(Deepak Gupta), ACJ.

June 13, 2007. (V.K.Ahuja), J.

s.